



General Assembly

February Session, 2002

Amendment

LCO No. 4077

HB0552104077HD0

Offered by:

REP. LAWLOR, 99th Dist.

REP. FARR, 19th Dist.

To: House Bill No. 5521

File No. 408

Cal. No. 246

"AN ACT CONCERNING SEARCH WARRANTS."

1 After line 38, add the following:

2 "Sec. 2. (NEW) (*Effective October 1, 2002, and in effect until October 1,*
3 *2004*) For the purposes of sections 2 to 13, inclusive, of this act:

4 (1) "Prosecuting official" means the Chief State's Attorney, a deputy
5 Chief State's Attorney, a state's attorney, an assistant state's attorney
6 specifically designated by the Chief State's Attorney, or a special
7 assistant state's attorney appointed by the Chief State's Attorney
8 pursuant to subsection (b) of section 51-285 of the general statutes;

9 (2) "Subpoena" means a subpoena ad testificandum or a subpoena
10 duces tecum, or both;

11 (3) "Property" includes, but is not limited to, documents, books,
12 papers, records, films, recordings and other tangible things.

13 Sec. 3. (NEW) (*Effective October 1, 2002, and in effect until October 1,*
14 2004) In the investigation of conduct that would constitute the
15 commission of a class A or B felony, a prosecuting official, in the
16 performance of such official's duties during such investigation, shall
17 have the authority to compel by subpoena the appearance and
18 testimony of witnesses and the production of property concerning the
19 matter under investigation. No prosecuting official may issue a
20 subpoena under this section to an attorney in regard to a former or
21 current client of such attorney. No prosecuting official may issue a
22 subpoena under this section unless authorized by a judge of the
23 Superior Court pursuant to section 4 of this act.

24 Sec. 4. (NEW) (*Effective October 1, 2002, and in effect until October 1,*
25 2004) (a) A prosecuting official who seeks to issue a subpoena under
26 section 3 of this act shall submit an application to a judge of the
27 Superior Court. Such application shall include an affidavit sworn to by
28 such prosecuting official stating that such official:

29 (1) Has reasonable grounds to believe that a class A or B felony has
30 been committed, and the facts that form the basis for such belief;

31 (2) Has reasonable grounds to believe that the person to be
32 summoned to appear and give testimony or produce property has
33 information relevant and necessary to the investigation concerning the
34 alleged commission of a class A or B felony, and the facts that form the
35 basis for such belief;

36 (3) Has reasonable grounds to believe that the appearance and
37 testimony of such person or the production of property by such person
38 would not occur or be available without the issuance of a subpoena,
39 and the facts that form the basis for such belief; and

40 (4) Has made reasonable efforts to secure such appearance,
41 testimony and property without recourse to a subpoena and those
42 efforts have been unsuccessful.

43 (b) If the judge finds that the provisions of subsection (a) of this

44 section have been satisfied, such judge may grant the application for
45 the issuance of a subpoena by such prosecuting official.

46 Sec. 5. (NEW) (*Effective October 1, 2002, and in effect until October 1,*
47 *2004*) (a) Any subpoena issued pursuant to sections 2 to 13, inclusive,
48 of this act shall (1) compel only the appearance of witnesses and the
49 production of property relevant and necessary to the investigation
50 being conducted, (2) specify with reasonable particularity any property
51 to be produced, and (3) require only the production of documents or
52 records covering a reasonable period of time.

53 (b) Any subpoena issued pursuant to sections 2 to 13, inclusive, of
54 this act shall be served at least five working days prior to the date
55 scheduled for the appearance of the witness, unless a judge of the
56 Superior Court in the judicial district where compliance with the
57 subpoena is sought, as provided in section 6 of this act, otherwise
58 orders for good cause shown.

59 (c) Any subpoena issued pursuant to sections 2 to 13, inclusive, of
60 this act shall contain a notice advising the person summoned of the
61 following: (1) The purpose of the investigation, (2) whether such
62 person is a target or possible target of the investigation, (3) that such
63 person has the right not to be compelled to give evidence against
64 himself or herself, (4) that such person has the right to have counsel
65 present and to consult with such counsel and, if such person is
66 indigent, to have counsel appointed to represent him or her, and (5)
67 that such person has the right to file a motion to quash or modify the
68 subpoena.

69 Sec. 6. (NEW) (*Effective October 1, 2002, and in effect until October 1,*
70 *2004*) Any subpoena issued pursuant to sections 2 to 13, inclusive, of
71 this act shall compel the witness to appear or produce the property in
72 the presence of a judge at a specified location in a courthouse in the
73 judicial district where the incident or incidents subject to investigation
74 are alleged to have occurred or, if the investigation is being conducted
75 by a prosecuting official of a judicial district other than the judicial

76 district where the incident or incidents subject to investigation are
77 alleged to have occurred, in a courthouse in that judicial district.

78 Sec. 7. (NEW) (*Effective October 1, 2002, and in effect until October 1,*
79 *2004*) If any subpoena is issued pursuant to sections 2 to 13, inclusive,
80 of this act for the production of the medical records, including
81 psychiatric records, of a person, the prosecuting official shall give
82 written notice of the issuance of such subpoena to such person. Such
83 person shall have standing to file a motion to quash the subpoena in
84 accordance with section 10 of this act. All medical records, including
85 psychiatric records, that are produced pursuant to a subpoena issued
86 pursuant to sections 2 to 13, inclusive, of this act, shall be designated as
87 confidential records and maintained in a confidential manner at the
88 office of the Chief State's Attorney until an arrest is made as a result of
89 the investigation.

90 Sec. 8. (NEW) (*Effective October 1, 2002, and in effect until October 1,*
91 *2004*) (a) Whenever a subpoena is issued pursuant to sections 2 to 13,
92 inclusive, of this act, the prosecuting official shall, not later than forty-
93 eight hours after service of the subpoena, excluding weekends and
94 holidays, give written notice of the issuance of the subpoena to the
95 presiding judge for criminal matters in the courthouse where
96 compliance with the subpoena is required. Such notice shall include
97 the identity of the person and, if the production of property is
98 compelled, a description of the property. Such notice shall be
99 confidential and not subject to disclosure. The failure to give such
100 notice shall not invalidate the subpoena. Such presiding judge shall
101 assign a judge of the Superior Court to preside over the proceeding.
102 The assignment of such judge shall be confidential and not subject to
103 disclosure. The proceeding shall not be open to the public.

104 (b) Prior to any witness being questioned, the prosecuting official
105 shall advise such person of the following: (1) The purpose of the
106 investigation, (2) whether such person is a target or possible target of
107 the investigation, (3) that such person has the right not to be compelled
108 to give evidence against himself or herself, and (4) that such person

109 has the right to have counsel present and to consult with such counsel
110 and, if such person is indigent, to have counsel appointed to represent
111 him or her. The presiding judge shall assure that such rights are not
112 infringed.

113 (c) A court reporter or assistant court reporter shall make a record of
114 the proceeding. The record of the proceeding shall be sealed and not
115 subject to disclosure, except that any witness who appeared and
116 testified shall be allowed access, at all reasonable times, to the record
117 of such witness' own testimony and shall have the right to receive a
118 copy of the transcript of the record of such testimony.

119 Sec. 9. (NEW) (*Effective October 1, 2002, and in effect until October 1,*
120 *2004*) If any witness properly summoned fails to appear or to produce
121 any property specified in the subpoena or, if having appeared, fails to
122 answer any proper question, the prosecuting official may apply to a
123 judge of the Superior Court in the judicial district as provided in
124 section 6 of this act setting forth such failure and requesting an order
125 requiring such person to appear and answer questions or produce such
126 property, as the case may be. If the judge finds that reasonable cause
127 exists, the judge shall issue a citation requiring the witness to appear
128 before a judge of the Superior Court in camera to show cause why
129 such witness should not appear or produce property or should not
130 answer any proper question. If, after hearing, the judge finds that the
131 witness has failed to show cause why such witness should not be
132 required to comply with the subpoena, the judge shall enter an order
133 requiring the witness to appear, to produce property or to answer any
134 proper question, as the case may be. The failure to obey such order
135 may be punished by the court as a contempt thereof. The application of
136 the prosecuting official and the order of the court shall be sealed as to
137 the public and not be subject to disclosure. The hearing on the
138 application shall not be open to the public.

139 Sec. 10. (NEW) (*Effective October 1, 2002, and in effect until October 1,*
140 *2004*) (a) Whenever a subpoena has been issued to compel the
141 appearance and testimony of a witness or the production of property

142 pursuant to sections 2 to 13, inclusive, of this act, the person
143 summoned may file a motion to quash the subpoena with the chief
144 clerk of the court for the judicial district as provided in section 6 of this
145 act. No fees or costs shall be assessed.

146 (b) The party filing the motion to quash shall be designated as the
147 plaintiff and the prosecuting official shall be designated as the
148 defendant.

149 (c) The motion, upon its filing, shall be sealed as to the public. The
150 motion shall be referred to the presiding criminal judge of the court for
151 hearing or for assignment to another judge for hearing. Unless
152 otherwise ordered by the judge conducting the hearing, the hearing
153 shall be conducted in camera and the file on the motion shall be sealed
154 as to the public, subject to further order of the court.

155 (d) The motion shall be expeditiously assigned and heard. The date
156 and time of the hearing shall be established by the clerk after
157 consultation with the judge assigned to conduct the hearing. The clerk
158 shall give notice to the parties of the hearing so scheduled.

159 (e) A judge may quash or modify any subpoena issued pursuant to
160 sections 2 to 13, inclusive, of this act for any just cause as may be found
161 by such judge, and shall quash or modify any such subpoena on the
162 following grounds: (1) That the witness summoned does not have
163 information relevant and necessary to the investigation, (2) that the
164 testimony sought is protected by the attorney-client privilege or a
165 statutory or constitutional privilege, or (3) that the production of the
166 property sought would be unreasonable or oppressive or that the
167 property constitutes attorney-client work product.

168 Sec. 11. (NEW) *(Effective October 1, 2002, and in effect until October 1,*
169 *2004)* (a) In any investigation conducted pursuant to sections 2 to 13,
170 inclusive, of this act, a state's attorney or, at the request of a special
171 assistant state's attorney, the Chief State's Attorney, may apply to a
172 judge of the Superior Court for an order granting immunity from
173 prosecution to any person whom the state calls or intends to call as a

174 witness if the prosecuting official finds that the testimony of the person
175 is necessary to the investigation of the case. Such immunity may
176 provide that the person will not be prosecuted or subjected to any
177 penalty or forfeiture (1) for or on account of any testimony given or
178 evidence produced by such person, or for or on account of any
179 evidence discovered as a result of or otherwise derived from testimony
180 given or evidence produced by such person, or (2) for or on account of
181 any transaction, matter or thing concerning which such person gives
182 testimony or produces evidence. A person who receives immunity
183 under this subsection shall not be immune from prosecution for
184 perjury or contempt committed while giving such testimony or
185 producing such property.

186 (b) No person who has been properly served with a subpoena
187 pursuant to sections 2 to 13, inclusive, of this act and receives
188 immunity under subsection (a) of this section, shall be excused from
189 appearing and testifying or producing any property before the
190 prosecuting official concerning an investigation pursuant to sections 2
191 to 13, inclusive, of this act upon the ground or for the reason that the
192 testimony or property required of such person may tend to convict
193 such person of a crime or subject such person to a penalty or forfeiture.

194 Sec. 12. (NEW) (*Effective October 1, 2002, and in effect until October 1,*
195 *2004*) All information and property obtained by a prosecuting official
196 as a result of the issuance of a subpoena pursuant to sections 2 to 13,
197 inclusive, of this act shall be confidential and not subject to disclosure,
198 except such as should, in the opinion of such official, be used or
199 disclosed in the performance of the official duties of such official. Any
200 exculpatory information obtained with respect to any person shall be
201 disclosed to such person if such person is subsequently arrested.

202 Sec. 13. (NEW) (*Effective October 1, 2002, and in effect until October 1,*
203 *2004*) All property produced as a result of the issuance of a subpoena
204 pursuant to sections 2 to 13, inclusive, of this act shall be returned to
205 the person from whom it was received if no criminal prosecution is
206 commenced involving the use of such property or shall be otherwise

207 disposed of as provided by law.

208 Sec. 14. Section 51-296 of the general statutes is repealed and the
209 following is substituted in lieu thereof (*Effective October 1, 2002, and in*
210 *effect until October 1, 2004*):

211 (a) In any criminal action, in any habeas corpus proceeding arising
212 from a criminal matter, in any extradition proceeding, [or] in any
213 delinquency matter or in any proceeding in which a witness has been
214 summoned by a subpoena issued pursuant to section 3 of this act, the
215 court before which the matter is pending shall, if it determines after
216 investigation by the public defender or [his] the public defender's
217 office that a defendant or a witness summoned by a subpoena issued
218 pursuant to section 3 of this act is indigent as defined under this
219 chapter, designate a public defender, assistant public defender or
220 deputy assistant public defender to represent such indigent defendant
221 or witness, unless, in a misdemeanor case, at the time of the
222 application for appointment of counsel, the court decides to dispose of
223 the pending charge without subjecting the defendant to a sentence
224 involving immediate incarceration or a suspended sentence of
225 incarceration with a period of probation or the court believes that the
226 disposition of the pending case at a later date will not result in a
227 sentence involving immediate incarceration or a suspended sentence
228 of incarceration with a period of probation and makes a statement to
229 that effect on the record. If it appears to the court at a later date that, if
230 convicted, the sentence of an indigent defendant for whom counsel has
231 not been appointed will involve immediate incarceration or a
232 suspended sentence of incarceration with a period of probation,
233 counsel shall be appointed prior to trial or the entry of a plea of guilty
234 or nolo contendere.

235 (b) In the case of codefendants, the court may appoint one or more
236 public defenders, assistant public defenders or deputy assistant public
237 defenders to represent such defendants or may appoint counsel from
238 the trial list established under section 51-291.

239 (c) Prior to [a defendant's appearance in court] the appearance in
240 court of a defendant in any matter specified in subsection (a) of this
241 section or of a witness summoned by a subpoena issued pursuant to
242 section 3 of this act, a public defender, assistant public defender or
243 deputy assistant public defender, upon a determination that the
244 defendant or witness is indigent pursuant to subsection (a) of section
245 51-297, shall be authorized to represent the defendant or witness until
246 the court appoints counsel for such defendant or witness.

247 Sec. 15. (*Effective October 1, 2002*) Not later than January 1, 2004, the
248 Chief State's Attorney shall submit a report to the Judiciary Committee
249 of the General Assembly concerning the issuance of subpoenas
250 pursuant to sections 2 to 13, inclusive, of this act including, but not
251 limited to, the number of applications submitted for the issuance of a
252 subpoena, the number of applications granted, the purpose of the
253 investigation, the offense or offenses allegedly committed that are the
254 subject of the investigation, the number of motions to quash a
255 subpoena that were filed and the rulings on such motions, the number
256 of applications for an order granting immunity from prosecution and
257 the rulings on such applications, the final results of the investigation
258 and the status of any criminal prosecutions resulting from such
259 investigation."